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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:9200 of 1995

DATED:06-03-2006

Between:

1. The Depot Manager, APSRTC, Nizamabad

Depot, Nizamabad and 3 others.

..... PETITIONERS

AND

1. The Labour Court-II, Andhra Pradesh, Hyderabad and another

.....RESPONDENTS

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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.9200 of 1995

ORDER:

Aggrieved by the award of the Labour Court-II, Hyderabad, in I.D.No.69

of 1993 dated 19-11-1994 as published in G.O.Rt.No.172 dated 23-01-1995 whereby the second respondent was directed to be reinstated into service without break in service and attendant benefits but with half of the backwages, the present writ petition is filed.

2. The facts in brief are that the second respondent herein was appointed as a driver on 21-05-1985 on daily wage basis. While he was driving the bus on 26-07-1989 a fatal accident resulted, wherein an young girl aged seven years was killed. The second respondent-workman was issued the charge sheet on 18-08-1989, which reads as under:

> "1. For having driven vehicle No.AAZ 8505 in rash and negligent manner and caused fatal accident at about 17-30 hours on 26-07-1989 at MZC farm on route Fitlam (Gulla) to Nizamabad which constitutes mis-conduct under Reg.(ix-a) of APSRTC Employees' (Conduct) Regulations, 1963.
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> 2. For having driven the vehicle No.AAZ 8505 with lack of anticipation and road sense and caused fatal accident dashing to a girl named Baby Shyamala aged 7 years who was crossing the road from right side to left side at MZC farm on route Fitlam (Gulla) to Nizamabad as a result of the impact she fell on the road, sustained grievous bleeding injuries on her left forehead, left arm and other parts of the body and succumbed to the injuries at about 20-00 hours on the same day at Government Hospital, Nizamabad, which constitutes mis-conduct under Reg.28 (ix-a) of APSRTC Employees' (Conduct) Regulations, 1963
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> 3. For having failed to detain vehicle No. AAZ 8505 on the spot of accident at MZC farm on 26-07-1989 and report the matter immediately to the concerned police and depot authorities while you were operating the vehicle on route Fitlam (Gulla) to Nizamabad, which constitutes mis-conduct under Reg.28 (ix-a), (xxii) and (xxxii) of A.P.S.R.T.C. Employees' (Conduct Regulations, 1963."

3. An enquiry was conducted and on the workman being found guilty of the charges, he was removed from service with effect from 02-07-1990. The workman's appeal and review to the Divisional Manager and Regional Manager were dismissed on 23-02-1991 and 11-10-1991 respectively. The workman was also criminally prosecuted in C.C.No.306 of 1989 and the said criminal case

ended in his acquittal on 12-01-1993.

4. Thereafter, the workman filed an application before the Labour Court in the year 1993 under Section 2-A (2) of the Industrial Disputes Act (for brevity 'the I.D.Act) which was numbered as I.D.No.69 of 1993. The legality and validity of the domestic enquiry was not questioned by the workman before the Labour Court. He filed a memo seeking exercise by the Labour Court of its jurisdiction under Section 11-A of the I.D.Act only with regards the quantum of punishment. The workman contended that when he was driving the bus, the girl aged seven years suddenly came on the road and despite his stopping the vehicle by applying sudden breaks to avoid the accident, the girl herself dashed to a culvert and fell down on the road. The workman contended that though he was not to be blamed for the injuries sustained by the girl, he had taken the girl to Government hospital at Nizamabad. The workman also filed the judgment in C.C.No.306 of 1989 wherein he was acquitted for the offence punishable under Section 304-A IPC. The labour Court concluded that the punishment awarded against the workman in removing him from service was not in consonance with the nature of the accident committed by him, and since the criminal Court had found him not guilty it could be safely concluded that the punishment awarded against the workman was severe and harsh. The labour Court held that justice would be met if the petitioner herein was directed to reinstate the workman with continuity of service and with half backwages.

5. Sri V.T.M.Prasad, learned Standing Counsel for the petitioners, would submit that while the findings recorded by the criminal Court were required to be taken into consideration by the labour Court while exercising its jurisdiction under Section 11-A of the I.D. Act, such findings were not automatically binding on the labour Court. Learned standing counsel would submit that since the workman had chosen not to question the legality or validity of the domestic

enquiry or adequacy or sufficiency of the evidence on record and had merely confined his request for an adjudication on the quantum of punishment, the labour court was not entitled to rely on the judgment in C.C.No.306 of 1989, which was not even marked as an exhibit, and to adjudicate on the quantum of punishment based on the acquittal by the criminal Court. Learned standing counsel would submit that since the charges held proved against the workman were for rash and negligent driving resulting in the death of a seven year old girl, the labour Court, while determining the quantum of punishment, was not justified in taking a sympathetic view. Learned standing counsel would submit that the labour court could not exercise its jurisdiction under Section 11-A and interfere with the quantum of punishment on the ground of misplace sympathy.

6. Sri Mahender Reddy, learned counsel for the second respondent-workman, would, however, urge that since the second respondent had been acquitted by the criminal Court on merits, the labour Court had rightly taken into consideration the acquittal as a factor for interfering with the quantum of punishment, in exercise of its jurisdiction under Section 11-A of the I.D.Act. Learned counsel would submit that pursuant to the award of the labour Court, the Regional Manager, APSRTC, had passed an order on 02-03-1995 directing that the second respondent be reinstated into service and that pursuant thereto, the second respondent had reported for duty on 17-05-1995 and was permitted to join duty. Learned counsel would submit that the second respondent has been working eversince from 1995 onwards without any blemish and for an accident, which occurred for no fault of his, the punishment of removal was totally disproportionate, was not justified and the labour Court was justified in interfering with the quantum of punishment and in directing that the second respondent-workman be reinstated into service. Learned counsel would further submit that in order to give a quietus to the entire episode, the second respondent workman was ready and willing to forego the backwages awarded

by the labour Court, provided, the award of the labour Court was confirmed in all other respects.

7. I find considerable force in the contention of Sri V.T.M.Prasad, learned Standing Counsel, that since the validity of the domestic enquiry is not in issue and the workman had filed a memo seeking adjudication only on the quantum of punishment, the labour Court ought not to have re-appreciated the evidence on record or to have relied on the judgment if the criminal court in coming to a conclusion that the punishment ought to be interfered with. We cannot however ignore the fact that pursuant to the award of the labour Court, the second respondent herein has been reinstated into service nearly eleven years ago and has been working eversince. It is not for this Court, in proceedings under Article 226 of the Constitution of India, to sit in appeal over the findings recorded by the labour Court or its exercise of jurisdiction under Section 11-A of the Act regarding the quantum of punishment. If the labour Court has exceeded its jurisdiction and has interfered with the punishment imposed on a workman by his employer on irrelevant grounds this Court can only remand the matter to the labour Court for its fresh consideration on the quantum of punishment, in accordance with law. Since, however, the second respondent has been reinstated into service nearly eleven years ago, and inasmuch as Sri K.Mahender Reddy, learned counsel for the second respondent, would submit that the second respondent is willing to forego the backwages awarded to him by the labour Court, to give a quietus to the dispute, in the peculiar facts and circumstances of the present case, I am of the view that the ends of the justice would be met, if, instead of remanding the matter to the labour Court, the award of the labour court is modified to one of reinstatement of the second respondent-workman into service with continuity of service and attendant benefits, but without backwages.

9. The writ petition is accordingly disposed of. No order as to costs.

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06th March, 2006

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